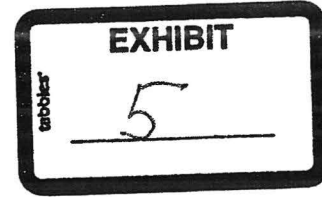


STATE OF NEW MEXICO  
RIO ARriba COUNTY  
FIRST JUDICIAL DISTRICT COURT



ANGELO D. JACQUES,

Plaintiff,

v.

No. D-117-CV-2014-0278

NORTHERN NEW MEXICO COLLEGE,

Defendant.

DEPOSITION OF MONIQUE NICOLE ROMERO

July 7, 2015

2:22 p.m.

1215 Paseo de Peralta

Santa Fe, New Mexico

PURSUANT TO THE NEW MEXICO RULES OF CIVIL PROCEDURE  
this deposition was:

TAKEN BY: RICHARD ROSENSTOCK  
Attorney for the Plaintiff

REPORTED BY: LISA DANNER, RPR, NM CCR #257  
Danner Reporting  
50 Theresa Lane  
Santa Fe, New Mexico 87507

1 MR. ROSENSTOCK: It's a document about the  
2 plaintiff. We asked for all the documents about him.

3 MR. KOMER: Well, I don't think you asked  
4 for this.

5 MR. ROSENSTOCK: We asked for all the  
6 documents about him.

7 MR. KOMER: And I also don't know when it  
8 was -- I don't know when it was generated. Take your  
9 time here. Let's figure it out.

10 Q. (BY MR. ROSENSTOCK) When did you give it to  
11 Bernie?

12 A. After -- after the incident at Paragua happened.

13 Q. How long after?

14 A. Probably about a week after.

15 Q. And how did he know about the incident?

16 A. That's when I -- I believe the lawyer had let him  
17 know or the restraining order. I think that's when  
18 Ricky was filing for the restraining order.

19 Q. What did you tell Bernie had happened?

20 A. Do you want me to explain the whole thing that  
21 happened at Paragua?

22 Q. What did you tell Bernie?

23 A. He told me, "Can you write me a letter saying  
24 what happened."

25 I said, "Yeah. Sure."

1 Q. And did you write it in his office?

2 A. No. I typed it out in my office, and I sent it  
3 over to him.

4 Q. That same day?

5 A. Yeah.

6 Q. Did you talk to Ricky about it before you wrote  
7 it up?

8 A. No. I wrote it, and I sent it over. But Ricky  
9 did know that I sent it over.

10 Q. How did he know you'd sent it over?

11 A. Because I told him. We were just there, and I  
12 told him, "Oh, I had to send Bernie a letter today about  
13 what happened at Paragua."

14 And he said, "Oh, okay."

15 Q. What time did you -- you saw Angelo Jacques at  
16 the Paragua, is that correct, sometime in April of this  
17 year?

18 A. Yeah, because my son was about 11 months old.

19 Q. And when you saw Mr. Jacques, were you coming or  
20 going from the restaurant?

21 A. We were leaving.

22 Q. And where were you when you saw Mr. Jacques?

23 A. Almost right at the front door.

24 Q. And were you on your way out the door?

25 A. Yes.

1 incident.

2 A. I think through our lawyer.

3 Q. Who -- you have a lawyer?

4 A. Well, the other -- the other Mark, the one that  
5 represents the college, I believe.

6 Q. Yeah, Mark Basham, who represents the college.  
7 Is he your lawyer?

8 A. I don't have a lawyer.

9 Q. I mean you didn't retain him or something?

10 A. No, no, no.

11 Q. Do you know whether Gwen was asked to give a  
12 statement?

13 A. I believe so.

14 Q. So there should be -- because you mentioned Gwen  
15 in your statement?

16 A. In mine, yes, yes.

17 MR. ROSENSTOCK: Okay. So, Mark, we'd like  
18 all three statements.

19 Q. (BY MR. ROSENSTOCK) Is there anybody else who  
20 gave a statement that you're aware of?

21 A. Not that I know of.

22 MR. ROSENSTOCK: Okay. That's all the  
23 questions I have.

24

25

**OFFICIAL RECEIPT**  
**First Judicial District Court**  
**225 Montezuma Ave.**  
**Santa Fe, NM 87501**

Receipt No.  
**SFED-2015-10481**

Transaction Date  
10/7/2015

Judge  
None Assigned

Payor  
Arnold

Description		Amount Paid
Miscellaneous Payment		
	Photocopies	4.55
	Photocopy Fee	4.55
	<b>SUBTOTAL</b>	<b>4.55</b>
<b>PAYMENT TOTAL</b>		<b>4.55</b>
Cash Tendered		20.55
Total Tendered		20.55
Change		16.00
10/07/2015 04:07 PM	Cashier Station SFED1	Audit 21089302

**OFFICIAL RECEIPT**

STATE OF NEW MEXICO  
COUNTY OF RIO ARriba  
FIRST JUDICIAL DISTRICT

No. D-117-CV-2014-00278

ANGELO JACQUES,

Plaintiff,

v.

NORTHERN NEW MEXICO COLLEGE,

Defendant.

**PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

Pursuant to Rules 1-034 and 1-037 of the New Mexico Rules of Civil Procedure, Plaintiff moves this Court for an order compelling Defendant to produce statements made by witnesses to a relevant event that are not protected from discovery under the attorney-client privilege nor the work product doctrine. As grounds for this Motion Plaintiff shows:

**I. INTRODUCTION AND FACTUAL BACKGROUND**

Plaintiff filed this action alleging that Defendant Northern New Mexico College ("the College") placed him on administrative leave from his position as IT Director and then failed to rehire him in retaliation for Plaintiff having raised issues of misuse of public funds and equipment, rampant mismanagement, and favoritism to high ranking College administrators and for otherwise having engaged in conduct protected by the New Mexico Whistleblower Protection Act. Plaintiff's Complaint describes a series of events about which he raised issues concerning the above-described improper conduct involving three high ranking College officials, including Ricky Serna, the Vice-President

for Institutional Advancement, who is the individual responsible for the management of federal grants. **Complaint**, ¶¶ 12, 23, 37-41, and 51.

Plaintiff alleges that it was the conduct of Vice-President Serna, among others, that caused the retaliatory adverse actions alleged in the Complaint. **Id.**, at ¶ 63.

Plaintiff specifically contends that:

The adverse actions taken against Plaintiff by Defendant were part of a pattern and practice of retaliation engaged in by Defendant, acting through Mr. Sanchez, Mr. Serna, Mr. Padilla and others, against NNMC employees who communicated to Defendant's officers and/or to third parties about acts or failures to act by Defendant that these employees believed in good faith to be improper or unlawful acts. This pattern and practice was calculated to intimidate employees and keep them from questioning improper and/or unlawful acts by the College administration and was a direct cause of the injuries suffered by Plaintiff.

**Id.**, ¶ 64.

Approximately five months after Defendant filed its November 11, 2014 Answer, Mr. Serna filed a separate action for a restraining order against Plaintiff claiming that Plaintiff had verbally harassed him at the El Paragua Restaurant in Espanola, New Mexico. **Exhibit 1**, Complaint in *Serna v. Jacques*, attached hereto. *Inter alia*, Mr. Serna sought to bar Plaintiff from making any public criticism of him on Facebook or other social media. **Id.** Prayer for Relief, ¶ (g). Mr. Serna's lawyers obtained an *ex parte* temporary restraining order. A mutual restraining order was subsequently entered until such time as the district court could hear Mr. Serna's Motion for Preliminary Injunction. In this separate action, Mr. Serna was represented by Joseph Romero and Mark Basham. Based on communications with the Risk Management Division, Plaintiff asserts here that the two lawyers representing Mr. Serna were **not** hired by the State to pursue Mr. Serna's private civil action but were privately retained by Mr. Serna to represent him in that case.

In the Mr. Serna's restraining order case against Plaintiff Jacques, Mr. Jacques

filed an Answer specifically alleging that Mr. Serna "filed this action in an effort to intimidate and silence him and as part of a pattern and practice by Plaintiff of retaliating against those who have complained of his conduct as a Vice President of Northern New Mexico College." **Exhibit 2**, Answer in *Serna v. Jacques* at ¶ 6.

When Plaintiff Jacques attempted to engage in discovery in Mr. Serna's case, Mr. Serna responded with a motion for protective order seeking to limit the scope of deposition discovery. After the district court denied Mr. Serna's Motion for Protective Order on July 9, 2015, **Exhibit 3**, Mr. Serna decided to dismiss his action against Plaintiff Jacques *with prejudice* and the Court entered an order of dismissal. **Exhibit 4**.

In the instant case, on July 7, 2015, Plaintiff deposed Monique Romero. Ms. Romero is a College employee and Mr. Serna's girlfriend. She was with Mr. Serna at El Paragua at the time of the alleged incident involving Plaintiff Jacques. At her deposition she testified that she, Mr. Serna and a third College employee, Gwen Ocana, wrote out statements about the El Paragua incident and provided them to Bernie Padilla, the College's Human Resources Director. Ms. Romero testified that Mr. Padilla had asked her for a statement and that she had gone to her office, typed one up and sent it to him. At the time Ms. Romero wrote her statement, she was not represented by counsel. **Exhibit 5**, Monique Romeo deposition, pp. 62-63, and 74. Mr. Serna's private lawyers in his restraining order case had requested that Mr. Padilla obtain statements regarding the alleged El Paragua incident. Neither Mr. Padilla nor the College were parties to that other case, and Mr. Padilla was not employed or otherwise retained by Mr. Basham's firm to assist with Mr. Serna's personal litigation. Plaintiff heard about these written witness statements for the first time during Ms. Romero's deposition. Both Ms. Romero and Mr. Serna have been listed by Defendant in Interrogatory Answers in the instant



case as potential witnesses who will present testimony adverse to Plaintiff.

Plaintiff contends that Mr. Serna's civil action was not only without merit but was a retaliatory action that was undertaken by Mr. Serna as part of the "pattern and practice of retaliation" engaged in by Mr. Serna, Mr. Sanchez and Mr. Padilla against persons critical of their management practices to intimidate such persons. This allegation is supported by Mr. Serna's blatantly unconstitutional request to the district court in his other case to prohibit Plaintiff from posting criticism of his conduct on Facebook and other social media.

After Ms. Romero's deposition, Plaintiff filed his Third Request for Documents requesting these witness statements. RFP 79 requested:

**Request for Production No. 79:** Please produce all statements submitted by any person to Bernie Padilla or any other NNMC administrator concerning the incident at El Paragua about which NNMC Vice President Ricky Serna claims that Plaintiff acted in an improper and/or aggressive manner towards him.

**Exhibit 6.** Defendant response to RFP 79 by refusing to produce the requested witness statements. Defendant did not assert a relevance objection but objected to producing the statements on the grounds of attorney-client privilege and work product. **Exhibit 6.**<sup>1</sup>

Counsel for the parties have conferred on this matter but could not resolve the dispute. Defendant's objections are not well-taken and the Court should enter an order compelling Defendant to produce these witness statements.

## **II. STATEMENT OF APPLICABLE LAW**

NMRA Rule 1-026(B)(1) states:

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<sup>1</sup> Defendant also alleged that "plaintiff may be requesting this material in this lawsuit potentially as a way to sidestep discovery limitations that may exist between the plaintiff and College employees in unrelated pending civil litigation". In fact, that litigation, which Plaintiff contends was retaliation for the instant case, had already been dismissed at the time this Discovery Response was filed.

*In general.* Parties may obtain discovery of any information, not privileged, which is relevant to the subject matter involved in the pending action. The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. A party responding to discovery requests shall provide all non-privileged responsive information then known to the party, subject to the limitations in these rules or as ordered by the court.

The New Mexico Supreme Court has made it clear that discovery in a civil action is broad and that the Rules of Civil Procedure must be liberally construed to ensure this.

In construing Rules 33 and 34, we must begin with the notion that discovery is designed to "make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent. In light of that policy, Rules 33 and 34 must be liberally construed in order to insure that a litigant's right to discovery is "broad and flexible."

***United Nuclear Corp. v. General Atomic Co.***, 1980-NMSC-094, ¶ 54, 96 N.M. 155, 169-70 (1980) (citations omitted).

The Court has ruled that information is discoverable when it "might conceivably have a bearing" on the subject matter of the action, or where there is "any possibility" or "some possibility" that the matters inquired into will contain relevant information.

This language is subject to a broad interpretation. . "Objections based on alleged irrelevancy must, therefore, be viewed in light of the broad and liberal discovery principle consciously built into" the rules of civil procedure. "The boundaries defining information relevant to the subject matter involved in an action are necessarily vague, making it practically impossible to formulate a general rule by which they can be drawn." Because courts "are not shackled with strict interpretations of relevancy," discovery is permitted as to matters that "are or may become relevant" or "might conceivably have a bearing" on the subject matter of the action, or where there is "any possibility" or "some possibility" that the matters inquired into will contain relevant information. Conversely, courts have said that discovery will be permitted unless the matters inquired into can have "no possible bearing upon," or are "clearly irrelevant" to the subject matter of the action. Not only is the term "relevant" subject to a broad interpretation as it is generally used in the discovery context, but also it is given a particularly liberal interpretation for purposes of discovery in antitrust cases.

*Id.*, 96 N.M. at 174 (citations omitted).

The pretrial discovery rules, including Rule 26, intend liberal pretrial discovery to

enable the parties to obtain the fullest possible knowledge of the facts before trial. Notwithstanding an objection to the discovery, the presumption is in favor of discovery. The discretion granted to the trial court under Rule 26 to limit discovery “must be read in the light of the purpose of these rules, which is to permit discovery.” **Marchiando v. Brown**, 1982-NMSC-076, ¶¶ 13-14, 98 N.M. 394, 397-8 (1982) (citations omitted).

#### **A. Work Product**

As to Defendant’s reason for not producing the requested written witness statements, NMRA Rule 1-026(B)(5) provides:

*Trial preparation materials.* Subject to the provisions of Subparagraph (6) of this paragraph, a party may obtain discovery of documents, electronically stored information and tangible things otherwise discoverable under Subparagraph (1) of this paragraph and **prepared** in anticipation of litigation or for trial **by or for another party or that party’s representative** (including the party’s attorney, consultant, surety, indemnitor, insurer or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party’s case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation.

“In general, work product is material prepared in anticipation of litigation by **a party, a party’s attorney or other people employed by a party.** The work product rule is not a privilege, but an immunity protecting from discovery documents and tangible things **prepared by a party or its representative in anticipation of litigation.**” **State ex rel. Brandenburg v. Blackmer**, 2005-NMSC-008, ¶ 11, 137 N.M. 238, 261 (emph. added) (citation omitted). The presumption in favor of discovery remains and “[t]he party asserting the work product immunity bears the burden of establishing for each document that the rule applies.” **Hartman v. Texaco**, 1997-NMCA-032, ¶¶ 18 and 20, 123 N.M. 220, 225.

In determining whether work product is present, courts will look at the extent to which legal counsel was involved in the preparation of the documents or in their supervision and whether the person taking the statement was part of the party's legal team. ***State ex rel. Brandenburg***, at ¶¶ 20 and 22, 137 N.M. at 262-63 ("Because victim advocates perform many tasks similar to those of other members of the prosecution team, even if some of their duties differ, we conclude that victim advocates are part of the prosecution team and that the relevant rules of attorney-client confidentiality and State disclosure are applicable"); ***Gingrich v. Sandia Corp.*** 2007-NMCA-101, ¶ 9, 142 N.M. 349 (a report was protected in discovery by the attorney-client privilege and the work product doctrine because the preparer of the report was "retained to perform and did perform legal services for Sandia Corporation in investigating the subjects covered by the ... Report ... and in creating the [Report]" and his work was prepared "in anticipation of litigation."); ***Knight v Presbyterian Hosp.*** 1982-NMCA-125, ¶¶ 3 and 8, 98 N.M. 523 (Where defendant hospital had its employee obtain witness statements for its attorney in anticipation of litigation, work product attached).

#### **B. Attorney-Client Privilege**

Attorney-client privilege applies only to ***communications between counsel and client***. ***Upjohn Co. v. United States***, 449 U.S. 383, 389 (1981).

#### **III. THE STATEMENTS AT ISSUE ARE NOT PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE OR BY THE WORK PRODUCT IMMUNITY.**

The attorney-client privilege is not applicable here because Plaintiff does not seek documents that evidence communications between Defendant and its attorney. ***Upjohn Co.***, 449 U.S. at 389. The statements sought in discovery here were prepared

by College employees at the request of Bernie Padilla and presented to Mr. Padilla. Mr. Padilla was not part of Mr. Basham's legal team and Mr. Padilla was not a client of Mr. Basham (or of his co-counsel) in that litigation. Because Mr. Padilla solicited and obtained the statements, the direct chain required by the attorney-client privilege was broken and the privilege does not apply even though Mr. Basham may have requested that Mr. Padilla obtain the statements. In addition, Ms. Romero and Ms. Ocana were also not clients of Mr. Basham or his co-counsel. Consequently, none of the requested statements is entitled to protection under the privilege.

The work product doctrine is also not applicable. Mr. Serna's civil action was a private action that did not involve the College (the Defendant here) as a party. The New Mexico Supreme Court has clearly held that work product is material prepared in anticipation of litigation "by **a party, a party's attorney or other people employed by a party.**" *State ex rel. Brandenburg*, at ¶ 11, 137 N.M. at 261 (emph. added). Mr. Padilla, Ms. Romero and Ms. Ocana do not fit any of these categories. None was a party in the other litigation, a party's attorney, or an employee of Mr. Serna's. Mr. Padilla was merely a non-party, non-employee conduit for Mr. Serna's lawyers to obtain statements that were prepared by Ms. Romero and the others without the assistance of counsel (and without the assistance of Mr. Padilla, for that matter). Mr. Padilla was not employed by Mr. Basham to work for Mr. Serna in that case, nor was he a representative or employee of Mr. Serna in any respect. Consequently, the work product doctrine does not protect the statements from disclosure as requested by Plaintiff's discovery.

### **CONCLUSION**

For the reasons set forth above, Plaintiff's Motion to Compel production of the

requested witness statements should be granted.

Respectfully Submitted,

/s/ RICHARD ROSENSTOCK

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Attorneys for Plaintiff

### **CERTIFICATE OF SERVICE**

I hereby certify that on September 11, 2015 I served Plaintiffs' Motion to Compel Production of Documents and this Certificate of Service on Defendant's attorney Mark E. Komer, Long, Komer & Associates, P.A. electronically through this Court's e-filing system, which caused the following counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

mark@longkomer.com

/s/ DANIEL YOHALEM

Daniel Yohalem

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

NANCY K. O'ROURKE,

Plaintiff,

v.

No. 13cv0193 RB/LAM

NORTHERN NEW MEXICO COLLEGE,

Defendant.

**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S  
MOTION TO COMPEL [Doc. 50]**

THIS MATTER is before the Court on *Plaintiff's Motion to Compel Responses to Specified Discovery[] or, for Sanctions* (Doc. 50), filed May 27, 2014. Northern New Mexico College (hereinafter, "Defendant") filed a response to the motion on June 11, 2014 [Doc. 52], and Plaintiff filed a reply on June 26, 2014 [Doc. 53]. This case involves allegations of discrimination on the basis of race and for retaliation, under Title VII, and for violation of the Equal Pay Act. See First Amended Complaint [Doc. 17]. Plaintiff makes the following contentions in her motion to compel: (1) that Defendant failed to respond to Plaintiff's First Set of Interrogatories to Dr. Barcelo, Second Set of Requests for Production to Northern New Mexico College, and First Set of Interrogatories to Northern New Mexico College (Doc. 50 at 3-4); (2) that Defendant failed to adequately respond to Interrogatory Nos. 4 and 9 regarding two surveys (*id.* at 4-12); and (3) that Defendant engaged in a general pattern and practice of obstruction and failure to meet its discovery obligations (*id.* at 12-13). Plaintiff asks the Court to compel Defendant to respond to all unanswered discovery, permit an adverse inference jury instruction with regard to the surveys, and pay Plaintiff's costs and fees associated with these discovery issues. *Id.* at 13.



Having considered the motion, response, reply, record of this case, and relevant law, the Court **FINDS** that the motion to compel shall be **GRANTED in part** and **DENIED in part**.

**A. Interrogatories and Requests for Production Regarding Dr. Barcelo**

Plaintiff first contends that Defendant failed to respond to Plaintiff's first set of interrogatories to Dr. Barcelo, second set of requests for production (hereinafter "RFP") to Defendant, and first set of interrogatories to Defendant, which were served on January 7, 2014. [*Doc. 50* at 3].<sup>1</sup> Plaintiff objects to Defendant's position that it is not required to respond to the interrogatories served on Dr. Barcelo or the portions of the RFPs regarding Dr. Barcelo's answers to interrogatories because Dr. Barcelo has been dismissed as a defendant. *Id.* at 3-4. Plaintiff states that she would not have agreed to the dismissal of Dr. Barcelo if she had known that Defendant would refuse to respond to these discovery requests once Dr. Barcelo had been dismissed. *Id.* at 4.

In response, Defendant states that no responses are required to the first set of interrogatories served on Dr. Barcelo, or the portions of the second set of RFPs served on Defendant that requested production of documents relevant to Dr. Barcelo's interrogatory responses, because Dr. Barcelo was dismissed as an individual defendant on February 6, 2014, which is the day the discovery responses were due. [*Doc. 52* at 1-3]. Defendant further states that it has fully responded to Plaintiff's second set of interrogatories to Defendant. *Id.* at 2-3.

In reply, Plaintiff states that Dr. Barcelo's dismissal from the case did not make her immune from discovery and, thus, Plaintiff asks the Court to compel Dr. Barcelo to respond to the

---

<sup>1</sup> The Court notes that Plaintiff contends that Defendant failed to respond to the first set of interrogatories to Defendant, and then discusses a second set of interrogatories served on Defendant. See [*Doc. 50* at 3-4]. Regardless, it appears that this issue has been resolved because Plaintiff states in her reply that only the interrogatories served on Dr. Barcelo are still at issue. See [*Doc. 53* at 3].



discovery served on her on January 7, 2014. [*Doc. 53* at 1-3]. Plaintiff states that she has received Defendant's responses to Plaintiff's second set of interrogatories (*id.* at 3), but does not address the RFPs served on Defendant, so it appears that those discovery requests have now been resolved.

The Court finds that Plaintiff's motion to compel with regard to these discovery requests are without merit. First, the Court notes that Plaintiff fails to attach to her motion a copy of the interrogatories or RFPs that are at issue, in violation of the Court's Local Rule 37.1(a) ("A party seeking relief pursuant to Fed. R. Civ. P. 26(c) or 37(a) must attach to the motion a copy of [the discovery requests at issue] and . . . the response or objection thereto.") (emphasis added). Regardless, Plaintiff's motion to compel a non-party to respond to interrogatories is improper under the Federal Rules of Civil Procedure. Rule 33 allows a party to serve interrogatories on another party to the case. Fed. R. Civ. P. 33(a)(1) ("[A] party may serve on any other party . . . written interrogatories."). Moreover, Rule 37 allows a party to move for an order to compel a discovery response when "a party fails to answer an interrogatory submitted under Rule 33." Fed. R. Civ. P. 37(a)(3)(B)(iii) (emphasis added). While Dr. Barcelo was a party to the case when Plaintiff served her interrogatories on her, her dismissal from the case renders Plaintiff's discovery requests to her under Rule 33 moot. *See Orion Ethanol, Inc. v. Evans*, No. 08-1180-JTM-DWB, 2009 WL 5205965, at \*3 (D.Kan. Dec. 22, 2009) (unpublished) ("Because the GreenHunter and Evans Defendants are no longer parties in this case, Plaintiff cannot pursue discovery against them in this case *by the previously served (or future) document requests, interrogatories, or notices to take depositions* . . . [and, therefore,] the court can not [sic] now grant Plaintiff's motion to compel and the motion is denied."); *see also Kellan v. Holster*, 518 F. Supp. 175, 179 (M.D. Fla. 1981) (finding that when a party is dismissed from a lawsuit,

[*Doc. 52* at 4]. Plaintiff fails to show how this response is inadequate or prejudices Plaintiff, other than stating that discovery has ended and that the deposition should be under Rule 30(b)(6). The Court, therefore, will deny Plaintiff's motion to compel with regard to Interrogatory No. 9, and will require Defendant to make Ms. Sanchez available for a Rule 30(b)(6) deposition that Plaintiff may provide notice of **no later than 21 days after entry of this order.**

With regard to Interrogatory No. 4, Defendant admits that it did not accurately respond to this discovery request because of confusion regarding the two surveys. The Court, therefore, will grant Plaintiff's motion to compel for this request, and will require Defendant to provide to Plaintiff the survey responsive to Interrogatory No. 4 - which appears to be the survey conducted by Ms. Stone - **no later than ten (10) days after entry of this Order** - even though it may be "in the possession of another independent contractor." [*Doc. 52* at 5]. In addition, if Plaintiff would like to re-depose Ms. Stone with regard to the survey she conducted after it is produced to Plaintiff, Plaintiff may send notice of a second deposition of Ms. Stone **no later than 21 days after the survey is produced to Plaintiff.**

The Court further finds that Plaintiff fails to make an adequate showing for sanctions with regard to these interrogatories. While Defendant admits that its request to Ms. Stone for the survey she conducted was delayed, Plaintiff fails to show that this delay was purposeful or done in bad faith. In the May 15, 2014 letter from Defendant's counsel to Plaintiff's counsel, Defendant explained that there was confusion regarding the survey by Ms. Stone and the Survey Monkey survey (*see Doc. 52* at 9), and Defendant has stated that it would supplement its answer to Interrogatory No. 4 (*id.* at 5). The Court, therefore, finds that Plaintiff has failed to demonstrate prejudice from this delay at this point, especially if Ms. Stone's survey is produced in the near future. In addition, in order to obtain an adverse inference instruction for the jury, Plaintiff must

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
**LOURDES A. MARTÍNEZ**  
**UNITED STATES MAGISTRATE JUDGE**

# New Mexico Courts

## Case Lookup

[Exit](#)

Name Search

Case Number Search

DWI Search

Case Detail

### Ricky A Serna v. Angelo D Jacques

CASE DETAIL			
CASE NUMBER	CURRENT JUDGE	FILING DATE	COURT
D-117-CV-201500158	Attrep, Jennifer L.	04/24/2015	TIERRA AMARILLA DISTRICT

PARTIES TO THIS CASE			
PARTY TYPE	PARTY DESCRIPTION	PARTY #	PARTY NAME
D	Defendant	1	JACQUES ANGELO D
P	Plaintiff	1	SERNA RICKY A
		ATTORNEY: ROMERO JOSEPH L.	
		ATTORNEY: BASHAM MARK A.	

HEARINGS FOR THIS CASE					
HEARING DATE	HEARING TIME	HEARING TYPE	HEARING JUDGE	COURT	COURT ROOM
07/09/2015	9:30 AM	MOTION HEARING	Attrep, Jennifer L.	TIERRA AMARILLA DISTRICT COURT	Rio Arriba County Courthouse
05/13/2015	3:30 PM	STATUS CONFERENCE	Attrep, Jennifer L.	TIERRA AMARILLA DISTRICT COURT	

CIVIL COMPLAINT DETAIL				
COMPLAINT DATE	COMPLAINT SEQ #	COMPLAINT DESCRIPTION	DISPOSITION	DISPOSITION DATE
04/24/2015	1	CLS: JUDGMENT/ DISPOSITION	Dismissal by the Judge, Not for Lack of Prosecution	07/10/2015
COA SEQUENCE #	COA DESCRIPTION			
1	Restraining Order			
PARTY NAME		PARTY TYPE		PARTY #

## Caselookup - Case Detail

REGISTER OF ACTIONS ACTIVITY					
EVENT DATE	EVENT DESCRIPTION	EVENT RESULT	PARTY TYPE	PARTY #	AMOUNT
07/10/2015	CLS: ORDER OF DISMISSAL				
	Order Dissolving Mutual No Contact Order and Dismissing Case With Prejudice				
07/10/2015	ORD: ORDER DENYING				
	Order Denying Motion for Protective Order				
06/30/2015	NTC: OF HEARING				
	Expedited Notice of Hearing July 9, 2015 9:30 am				
06/23/2015	ORD: ORDER				
	MUTUAL NO CONTACT ORDER				
06/09/2015	REQUEST FOR HEARING/ SETTING				
	D-117-CV-2015-00158 Expedited Request for Hearing				
06/09/2015	NTC: NOTICE				
	D-117--CV-2015-00158 Notice of Completion of Briefing of Motion for Protective Order, to Quash Subpoena and Notice of Non-Appearance				
06/09/2015	REPLY				
	D-117-CV-2015-00158 Plaintiff's Reply in Support of Motion for Protective Order, to Quash Subpoena and Notice of Non-Appearance				
06/04/2015	MTN: MOTION				
	Defendant s Unopposed Expedited Motion to Obtain an Expedited Hearing on Plaintiff s Motion for Protective Order				
06/03/2015	RESPONSE				
	Defendant s Response To Plaintiff s Motion for Protective Order				
06/02/2015	MTN: MOTION				
	D-117-CV-2015-00158 Motion for Protective Order, to Quash Subpoena and Notice of Non-Appearance				
05/29/2015	ANSWER				
05/22/2015	CERTIFICATE OF SERVICE				
	Certiificate of Service of Deposition Notices and Subpoena				
05/14/2015	REQUEST FOR COPY OF TAPES/CD				
05/12/2015	ORD: OF CONTINUANCE				
	Order Granting Motion for Continuance and Setting Status Conference for May 13, 2015				
05/12/2015	REPLY				
	Reply Concerning Defendnat's Motion to Continue Hearing				
05/12/2015	NTC: COMPLETION OF BRIEFING				
05/12/2015	RESPONSE				
	D-117-CV-2015-00158 Response to Defendant's Motion for Continuance of Hearing				
05/12/2015	MTN: FOR CONTINUANCE				

	Defendant's Motion for Continuance of Preliminary Injunction Hearing				
05/08/2015	AFFIDAVIT				
	D-117-CV-2015-00158 Affidavit of Richard A. Guillen				
05/08/2015	SUMMONS RETURN				
	D-117-CV-2015-00158 Summons Return (Angelo D. Jacques)				
04/30/2015	ORD: TEMPORARY RESTRAINING ORDER				
	Temporary Restraining Order				
04/28/2015	SUMMONS ISSUED				
	Angelo D Jacquez				
04/24/2015	OPN: COMPLAINT				
	Complaint and Application for Civil Restraining Order				

JUDGE ASSIGNMENT HISTORY			
ASSIGNMENT DATE	JUDGE NAME	SEQUENCE #	ASSIGNMENT EVENT DESCRIPTION
04/24/2015	Attrep, Jennifer L.	1	INITIAL ASSIGNMENT

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